



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-MB-2011-N256]

[FXMB12310100000P2-123-FF01M01000]

Special Purpose Permit Application; Draft Environmental Assessment; Hawaii-Based Shallow-Set Longline Fishery

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service, have received an application under the Migratory Bird Treaty Act of 1918, as amended (MBTA), from the Pacific Islands Regional Office of the National Marine Fisheries Service (NMFS), Department of Commerce, for a permit for the incidental take of migratory birds in the operation of the Hawaii-based shallow-set longline fishery that targets swordfish (*Xiphias gladius*). If issued, the permit would be the first of its kind under our Special Purpose permitting regulations. We invite public comment on the draft environmental assessment (DEA), which evaluates alternatives associated with this permit application.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download a copy of the DEA on the Internet at <http://www.fws.gov/pacific/migratorybirds/nepa.html>. Alternatively, you may use one of the methods below to request a hard copy or a CD-ROM. Please specify the “DEA for the NMFS MBTA Permit” on all correspondence.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* pacific_birds@fws.gov. Include “DEA for the NMFS MBTA Permit” in the subject line of the message.
- *U.S. Mail:* Please address written comments to Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE 11th Ave., Portland, OR 97232.
- *Fax:* Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, 503-231-2019; Attn.: DEA for the NMFS MBTA Permit.

FOR FURTHER INFORMATION CONTACT: Michael Green, Acting Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 503-231-2019 (phone); pacific_birds@fws.gov (email, include “DEA for the NMFS MBTA Permit” in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service (Service) has received an application from NMFS for a special purpose permit under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-711) (MBTA). The permit, if issued, would authorize incidental take of migratory birds, principally two species of albatross, by NMFS in its regulation of the shallow-set longline fishery based in Hawaii. This fishery targets swordfish and operates on the high seas and within the United States Exclusive Economic Zone (EEZ). The migratory birds incidentally taken in the fishery are predominantly Laysan and Black-footed Albatross (*Phoebastria immutabilis* and *P. nigripes*). One individual each of Sooty Shearwater (*Puffinus griseus*) and Northern Fulmar (*Fulmarus glacialis*) have been reported taken in the fishery. The endangered Short-tailed Albatross (*Phoebastria albatrus*) occurs in the area where the fishery operates and has been observed from Hawaii-based longline fishing vessels, but no take of this species has been reported. Consultation under section 7(a)(2) of the Endangered Species Act is in progress to assess the impacts of this fishery on the Short-tailed Albatross.

The Draft Environmental Assessment (DEA) analyzes the alternatives associated with this permit application in light of our permitting regulations in the Code of Federal Regulations (CFR) in 50 CFR 21.27 under the MBTA. If we issue the permit at issue in this environmental assessment, it will be the first permit under these regulations issued to authorize incidental take of migratory birds by an agency regulating a commercial, non-conservation activity.

Background

Regulations under the MBTA allow the Service to issue permits to take migratory birds for various reasons, such as depredation and scientific collecting. One of those regulations, 50 CFR 21.27, allows the Service to issue special purpose permits in circumstances not addressed by specific permit regulations. An application for a special purpose permit must meet the general permitting conditions set forth in 50 CFR 13 and make a “sufficient showing” of:

- benefit to the migratory bird resources,
- important research reasons,
- reasons of human concern for individual birds, or
- other compelling justification.

We will issue a special purpose permit only if we determine that the take is compatible with the conservation intent of the MBTA. Standard conditions for permit issuance include those described in 50 CFR 13.21(e) and 21.27(c).

The Hawaii-based longline fishery that targets swordfish is a pelagic or open-ocean fishery that began in the late-1980s and has since been managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region. Shallow-set longlining consists of deploying a mainline 18 to 60 nautical miles in length with floats at 360-meter (m) intervals. The mainline depth is 25 to 75 m. About four branchlines, 10 to 20 m in length, with baited hooks and artificial light sticks to attract swordfish, are suspended between floats, for a total of approximately 700 to 1,000 hooks per deployment. The line is deployed, or “set,” after sunset, left in the water overnight, and

retrieved, or “hailed,” in the morning. Seabirds, as well as sea turtles and other non-target species, can be killed or injured during either deployment or retrieval of the lines, when they are unintentionally hooked or entangled in fishing gear.

The shallow-set sector of the Hawaii-based longline fishery operates under NMFS regulations requiring the use of measures to avoid and minimize the injury and death of seabirds (67 FR 34408, 69 FR 17329, 70 FR 75075). These regulations were in place when the fishery was reopened in 2004 following a court-ordered closure in 2001 that addressed concerns about endangered sea turtles. Between 2004 and 2010, the fishery has taken (killed or injured) an estimated total of 332 Laysan and 118 Black-footed albatrosses, an annual average of roughly 55 and 20 birds of each species, respectively. These levels of take are expected to continue, and are not thought to pose a risk of population-level impacts or change in conservation status for either species.

The Pacific Islands Regional Office of NMFS manages and regulates this fishery under the Fishery Management Plan, which was developed by the Western Pacific Regional Fishery Management Council and approved by the Secretary of Commerce, in accordance with the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) (MSA). Under the MSA, Fishery Councils are vested with the authority to propose amendments to Fishery Management Plans. NMFS may approve or partially approve proposed amendments; approvals are codified as Federal regulations. In 2010, regulations went into effect to implement an amendment that removed the restriction on fishing effort (annual number of sets) in this fishery that had been in place since 2004. Because fishing effort never reached the limit that has now been removed, and effort is increasing only slowly, NMFS

anticipates that total effort in the fishery will not increase substantially between 2011 and 2014, the period that would be covered by a permit under the MBTA.

Applicant's Proposal

NMFS proposes to continue operation of the shallow-set fishery under current regulations that require the use of measures to avoid and minimize take of migratory birds. In addition to continued implementation of these regulations, NMFS proposes to analyze the high proportion of the total observed take in this fishery that occurs as injured birds. Specifically, NMFS would examine the role of untended or “lazy” lines, offal discards, and other practices in making hooks and gear available to seabirds and possibly attracting and habituating seabirds to longline vessels, especially during gear retrieval. The results of these assessments would be reported to the Service, and reports would include any new information that could further reduce the take of seabirds in the fishery or point to research needed to achieve reduction. If new analyses and qualitative assessments lead to identification of means to reduce take of migratory birds, NMFS would develop these remedies so that they could be incorporated into NMFS regulatory processes in a timely fashion. If new information does not lead to modified or new practices that could reduce take of migratory birds in the fishery, NMFS would develop study plans for needed research and/or a proposal or proposals to offset the unavoidable take in the fishery in a manner that would not affect operation of the fishery. These additional activities were described in materials submitted as part of the permit application, and if we issue the permit after completion of the National Environmental Policy Act (NEPA) process, then these commitments would become conditions of the

permit.

The Service independently evaluated the estimated total and average number, and the nominal rate, of seabirds taken in the fishery. This evaluation, in relation to the existing avoidance and minimization measures, proposed new activities, and potential offsetting conservation measures, is discussed in the DEA, along with the implications for direct, indirect, and cumulative effects under three alternatives.

Next Steps

The public process for the proposed Federal permit action will be completed after the public-comment period, at which time we will evaluate the permit application and comments submitted on the DEA and determine whether the application meets the permitting requirements under the MBTA and applicable regulations. Upon completion of that evaluation we will select our course of action among the three alternatives identified in the DEA. We then will either issue a final environmental assessment and a Finding of No Significant Impact or initiate the preparation of an Environmental Impact Statement.

Public Comments

We invite public comment on the DEA. You may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly

available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668-668c) and NEPA regulations (40 CFR 1506.6).

Dated: December 23, 2011

Richard Hannan,
Deputy Regional Director,
Pacific Region,
Portland, Oregon.

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